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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

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In Delaware, the Court of Chancery has ruled that a vote cast by one of two co-executors in favor of a charter amendment was illegal, where the other co-executor protested at the time the vote was cast against the amendment's adoption. (See page 366.)

The Supreme Court of Mississippi has held that the effecting of loans on Mississippi property through contracts closed out of the state does not constitute doing business. (See page 369.) In Tennessee, the Supreme Court of that state has ruled that an unlicensed foreign corporation could sue upon the surety bond of an agent representing it in that state. (See page 370.)

In New York, a stockholder's application seeking inspection of his corporation's records was granted, with reservations, where the stockholder was engaged in a competing business. (See page 367.)

President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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What Constitutes Doing Business

Repossession and Resale of Property

There are occasions when a foreign corporation which has sold its products in interstate commerce to customers in a state in which it is not authorized to do business, finds circumstances arise shortly afterward which may require it, for its own protection, to recapture the property. If it resells it to another customer within the same state, a question arises as to whether it is to be regarded as "doing business" within the state so as to be required to be qualified in order to effect the resale.

In a Missouri decision, the shipment of iron in cars to Missouri customers on previously received orders, diverted, upon arrival, to other customers with whom the seller also had contracts entered into prior to shipment, was held not to constitute an intrastate transaction as distinguished from an interstate transaction.[1]

In an Arkansas case, law books sold in interstate commerce, under a contract in which title was retained, were reclaimed by the seller and resold. The second sale was ruled a part of the original interstate transaction and regarded as not constituting the doing of intrastate business.[2] In other decisions involving somewhat similar facts, the same conclusion has been reached. In Oregon, for instance, a second sale has been regarded as "an isolated and emergency transaction thrust upon the plaintiff by the peculiar circumstances of the case,"[3] while, in Florida, it was ruled in connection with such an interstate transaction that "the seller's right to enforce the sale contract remains even though the buyer's possession and rights be transferred to successive assignees with the knowledge of the seller."[4] There are a number of Texas decisions to the same general effect.[5]

While the trend of the decided cases is to regard resales following closely upon the original sale as a part of the original interstate transaction, there is a Wisconsin decision to the effect that an unlicensed foreign corporation was doing business where it sold a mill to a Wisconsin company and later substituted another and resold the original to the defendant. The second sale was held not to be a part of an interstate transaction and the sale was ruled void.[6]

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[1] *Rogers v. Union Iron & Foundry Co.*, 150 S. W. 100.

[2] *L. D. Powell Co. v. Rountree*, 247 S. W. 389. In another Arkansas decision, a foreign corporation was held not to be doing business where it had sold drugs to a customer who became bankrupt. The bankrupt's entire stock of drugs was purchased and the foreign corporation carried on the retail sale of drugs at the bankrupt's place of business for a period of almost two months until the business could be sold. (*Sillin v. Hessig Ellis Drug Co.*, 26 S. W. 2d 122.)

[3] *Rashford Lumber Co. v. Dolan*, 260 Pac. 224.

[4] *Mergenthaler Linotype Co. v. Gore*, 160 So. 481.

[5] *Phelps v. Jesse French & Sons Piano Co.*, 65 S. W. 2d 374; *Keating Implement & Machine Co. v. Favorite Carriage Co. et al.*, 35 S. W. 417; *Harcrow et al. v. W. T. Rawleigh Co.*, 145 S. W. 2d 925, (see page 371); *American Soda Fountain Co. v. Hairston et al.*, 60 S. W. 2d 546; *North et al. v. Mergenthaler Linotype Co.*, 77 S. W. 2d 580.

[6] *Sprout, Waldron & Co. v. Amery Mercantile Co.*, 156 N. W. 158.

Domestic Corporations

Delaware.

Vote cast by one co-executor in favor of charter amendment ruled illegal where other co-executor protested at the time against amendment's adoption. Complainant preferred non-assenting stockholders sought to restrain the filing of an amendment to defendant corporation's charter on the ground that it had not received the necessary vote of the preferred stockholders. The Chancellor observed: "The precise question to be determined is whether that amendment received the requisite vote of the 7% cumulative preferred stockholders, or whether it is invalid, at least as to stockholders of that class who failed or refused to vote their stock in its favor." The amendment was of a type which, under the terms of the charter, required an affirmative vote or written consent of the holders of 75% of the preferred shares. The court said: "But in any aspect of the case, whether the amendment in question can be said to have received a 75% vote of the preferred stock depends on whether the 1159 shares belonging to the estate of Joseph Bancroft, deceased, were legally voted in favor of it at the stockholders' meeting of November 10th, 1937. The Wilmington Trust Company, a corporation of this State, and Elizabeth H. Bancroft, widow of Joseph Bancroft, deceased, are co-executors of his will. At that meeting the Wilmington Trust Company, purporting to act as one of such executors, voted the 1159 shares of preferred stock in question in favor of the proposed charter amendment, but Mrs. Bancroft definitely refused to join in that action, and, through her counsel, vigorously protested against its adoption. At the same time, Mrs. Bancroft caused a statement, signed by her to that effect, to be read, which among other things stated that she had 'refused to join with her co-executor in accepting it.' The Judges of Election counted the shares as having been voted in favor of that amendment, but, in view of the objection registered by Mrs. Bancroft at that time, the vote was illegal and the ballot cast should not have been counted." The purported charter amendment was therefore ruled to be void as to the complainants. *Sellers et al. v. Joseph Bancroft & Sons Co.*, 17A. 2d 831. Hugh M. Morris and Edwin D. Steel, Jr., of Wilmington, for complainants and intervenors. Robert H. Richards, Jr., of Richards, Layton & Finger of Wilmington, and Maurice Walk of Chicago, Ill., for defendant.

New York.

New York corporation ruled able to sue, after dissolution, on pre-existing contract. In a recent case in the United States Circuit Court of Appeals, Third Circuit, a question raised was whether the plaintiff, a New York corporation, which had on May 26, 1919 filed a certificate of voluntary dissolution, had the capacity to sue another corporation subsequent to that date on a contract entered into between the two companies in 1918. The defendant contended that voluntary dissolution marked the death of the plaintiff as a corporate body and

that there was, therefore, no plaintiff to conduct the action. The court said: "The New York statute, however, must be examined before this question can be answered. At the time the voluntary petition of dissolution was filed the New York statute provided with respect to such dissolution of a New York corporation, (Laws of 1901, Ch. 28, Sec. 221 (3)): 'Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up.' The defendant contends that this provision limits the right to sue to claims which have ripened into causes of action at the time of the dissolution. None of the New York decisions cited by either side construes the statute on this point and we have been unable to find any. But in the absence of authoritative decisions limiting them, the words of the statute seem clear. Existence is continued for 'suing and being sued for the purpose of enforcing such debts or obligations.' That an existing contract is an obligation seems too certain a proposition to require extensive argument or marshaling of authorities to prove it. A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty. Restatement, Contracts Sec. 1. That the defendant, by its contract, came under obligation to the plaintiff is plain. If it did not perform the plaintiff could sue for the breach of the obligation under the clear words of the statute, even though it had voluntarily dissolved. Compare City of Philadelphia v. Liberman, 112 F. (2d) 424, 428 (C. C. A. 3, 1940). Under the New York statute the figure of speech analogy is not death of the corporation, but its retirement from active business. The defendant also says that after the plaintiff corporation was dissolved, there being no plaintiff, there could be no diversity of citizenship. This is the same point as that above stated in a somewhat different way. If the corporation, under the New York law, was sufficiently alive to sue, as we hold it was, the requisite diversity of citizenship existed. The parties were proper and there was a controversy." *Stentor Electric Manufacturing Company, Inc. v. Klaxon Company*, 115 F. 2d 268. James D. Carpenter of Jersey City, N. J., (Henry M. Hogan and Robert H. Spreen of New York City and Kevin McInerney of Rochester, N. Y., of counsel), for appellant. Paul Leahy and Southerland, Berl, Potter & Leahy of Wilmington, Del., (Murray C. Bernays and Abraham Friedman of New York City, of counsel), for appellee. *(Note: Appeal filed in the Supreme Court of the United States, February 3, 1941; Docket No. 741, Certiorari granted, March 3, 1941.)*

Stockholder's application seeking inspection of corporation's records granted, with certain reservations, where stockholder was engaged in a competing business. In ruling upon an application by a stockholder for an order directing the inspection of books and records of a respondent corporation, the New York Supreme Court,

Special Term, Queens County, after considering respondent's contention that inasmuch as the petitioner was engaged in a competing business, he was not entitled to the relief he sought, said: "That fact, in my opinion, is not a sufficient justification for refusing the application altogether. People ex rel. Ludwig v. Ludwig & Co., 126 App. Div. 696, 702, 111 N. Y. S. 94. A stockholder has 'a right to examine the corporate books to determine whether the officers of the corporation are properly managing its affairs, even though upon an examination of the books it should appear that in fact there was no mismanagement.' Durr v. Paragon Trading Corp., 270 N. Y. 464, 471, 1 N. E. 2d 967, 970. Accordingly, the application is granted with the exception that the books containing any business secrets of the corporation or the names and addresses of customers may be withheld." *Hansen v. Marblette Corp.*, 24 N. Y. S. 2d 200. Robert M. McCormick, Jr. of New York City, for petitioner Otto A. Hansen. Louis B. Boudin of New York City, for respondent Marblette Corporation.

North Carolina.

Preferred stockholder, objecting to reorganization plan, ruled to have vested right in unpaid accrued dividends. Plaintiff preferred stockholder sought to have a corporate reorganization of defendant, together with charter amendments, declared invalid. She filed suit to protect her rights as to accrued dividends, to compel the payment of such dividends prior to payment of dividends on reorganization stock and to restrain the defendant from the prior payment of dividends on any stock until dividends on plaintiff's preferred stock were first paid. The Supreme Court of North Carolina said: "When defendant issued to plaintiff her certificates of stock it, by the stipulations printed thereon, contracted to pay her 'a fixed, annual, guaranteed, cumulative dividend' of 7 per cent, payable quarterly 'before any dividend shall be set apart or paid on any stock preferred or common, heretofore or hereafter issued by this corporation.' Under this contract plaintiff became vested with a property right in and to such dividends as they accrued, which property right cannot be divested without her consent, either by a subsequent reorganization, or by legislative enactment." The court found that plaintiff had not by implied consent, waiver or laches waived her rights and ruled she was entitled to relief. It indicated, however, that inasmuch as more than 75% of the outstanding preferred stock, as required by the charter, had approved the issuance of a stock having priority over the issue of preferred stock held by plaintiff, the corporation could issue such a stock having priority over the stock of plaintiff as to the payment of dividends thereafter accruing. It also ruled that "plaintiff cannot be compelled to surrender her certificates of stock and to accept a new certificate in lieu thereof guaranteeing a dividend at a rate less than 7 per cent per annum." *Clark v. Henrietta Mills*, 12 S. E. 2d 682. Smith, Leach & Anderson and John E. Lawrence of Raleigh and Smith, Wharton & Hudgins of Greensboro, for appellant. Brooks, McLendon & Holderness of Greensboro, for appellee.

Washington.

In dismissing, without prejudice, action by certain creditors against certain directors under statute providing a limited form of directors' liability, court indicates all creditors and all directors should have been made parties to the suit. In *Royer et ux. v. Maib et al.*, 107 P. 2d 335, the Supreme Court of Washington directed the lower court to dismiss without prejudice an action brought by two creditors against certain directors of a corporation under a statute, Sec. 8, Ch. 185, L. 1933, which provided for liability on the part of directors for corporate debts and liabilities arising from their failure to file a statement required under this statute, indicating that the stated amount of paid-in capital had been fully paid. The lower court had found that while a certificate had been filed, it contained false statements. The Supreme Court of the state noted that the statute provided not for a general liability to creditors, but for a limited liability related to the failure to comply with the statute. The court stated the question before it as being "whether, for the liability provided in this statute, an action at law can be maintained by one creditor against one of the directors who has been at fault." In dismissing the action without prejudice, the court said: "The action to enforce this liability is equitable in character, in which all directors and creditors must be made parties, either plaintiffs or defendants, for the purpose of determining once and for all their rights and liabilities, and the receiver of a corporation is a proper party in order that the decree might make proper provision as to the application of the corporation's assets." Stephen E. Chaffee of Sunnyside, for appellants. D. V. Morthland and Lane Morthland of Yakima, for respondents.

Foreign Corporations

Mississippi.

Effecting loans on Mississippi property through contracts closed out of the state, ruled not to be doing business. Plaintiff was a Tennessee mortgage and trust company which effected loans on Mississippi property through local Mississippi correspondents, who, as agents of the borrowers, forwarded applications to the plaintiff for approval. Plaintiff then placed the loans with an insurance company. This suit was brought to recover from defendant borrowers on their note given plaintiff to cover a commission for procuring a loan from an insurance company for the defendants, who had been unsuccessful in pleading in the lower court that plaintiff was doing business in Mississippi without complying with sections 4140 and 4164, Code of 1930, requiring foreign corporations doing business to file a copy of their charters with the Secretary of State, and to appoint an agent in the state upon whom process might be served. The Supreme Court of Mississippi affirmed a judgment for the plaintiff, regarding the contract resulting from defendants' application for the loan in question as a Tennessee contract and concluded that the

activities of the plaintiff did not constitute the doing of business in Mississippi. *Morrison et al. v. Guaranty Mortgage & Trust Co.*,* 199 So. 110. Dugas Shands and Palmer Lipscomb of Cleveland and E. B. Taylor of Shelby, for appellants. Robert N. Somerville of Cleveland, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Mississippi, page 504.

Nebraska.

Service upon Auditor of State as statutory agent of unlicensed foreign corporation set aside where made after corporation ceased to do business. In an action originally instituted in a Nebraska court, but later removed to the federal court, service was made upon defendant unlicensed foreign corporation by serving the State Auditor of Public Accounts as its statutory agent at a time after the corporation had ceased to do business in the state. The United States Circuit Court of Appeals, Eighth Circuit, referred to the latest Nebraska court decision involving similar circumstances and applied the rule there that service of summons upon an unqualified foreign corporation by delivery to the Auditor of Public Accounts under the statute was sufficient to give the court jurisdiction. The District Court, however, had held the service invalid on the ground that the authority of the State Auditor to accept service must be held to have terminated when the corporation ceased to do business in the state. Finding implied authority for such a holding in a decision of the Supreme Court of Nebraska, the court affirmed the judgment of the District Court quashing the service by ruling that "the appointment made by Sec. 22-1301, Neb. Comp. St. 1929, of the State Auditor as the agent of a foreign corporation for the service of process against it, when it undertakes to do business in the state, and the consent which is implied on the part of the corporation thereto, automatically terminate or expire when the corporation ceases to do business in the state." *Yoder et al. v. Nu-Enamel Corporation*,* United States Circuit Court of Appeals, Eighth Circuit, February 11, 1941. Commerce Clearing House Court Decisions Requisition No. 252972. Sterling F. Mutz, for appellants. George W. Becker (Francis L. Boutell, Isidor Ziegler, I. J. Dunn and D. L. Manoli, on the brief), for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Nebraska, page 506.

Tennessee.

Unlicensed foreign corporation ruled able to sue on surety bond of agent representing it in state. Plaintiff foreign corporation brought suit to collect from the surety on a bond executed by an agent of the plaintiff, soliciting in Tennessee, to recover for certain delinquencies in the account of that agent with the plaintiff. The defendant was the agent's surety. In addition, defendant, a distributor of magazines

with an office in Kentucky, had solicitors in Tennessee who obtained subscriptions for magazines. These subscriptions were sent to plaintiff's agent in Tennessee for verification. He then made monthly collections. Because of failure to pay an amount remaining due, suit was instituted to recover from the surety. Defendant contended that a recovery could not be had because plaintiff was doing business in Tennessee without being licensed as a transient merchant under Sec. 1243 of the Tennessee Code, as it was transacting business in violation of law. The Tennessee Supreme Court said: "There is much argument as to whether the nature of the plaintiff's business is such as to exempt it from the payment of this tax but we think this question is not determinative." The court then referred to the case of Packett Co. v. Agnew, 132 Tenn. 265, where it noted "it was there held that although a corporation had failed to comply with the law requiring a foreign corporation to file a certified copy of its charter with the secretary of state, and was therefore doing business in violation of law, it was not prevented from requiring its officers and employees to account for secret profits made with the company's money and credit." Concluding that a judgment for the plaintiff should be affirmed, the court observed: "The obligation of the defendant, the agent's surety, was to indemnify plaintiff against any misappropriation of its funds received by such agent. The agent's surety, no more than the agent himself, can rely on any failure of the plaintiff to pay its privilege tax." *Brown v. Periodical Publishers Service Bureau, Inc.,** Tennessee Supreme Court, January 11, 1941. Commerce Clearing House Court Decisions Requisition No. 250826.

* The full text of this opinion is printed in **The Corporation Tax Service**, Tennessee, page 312.

Texas.

Resale of goods originally sold in interstate commerce ruled not doing business so as to require obtaining of permit. Plaintiff unlicensed corporation sold certain goods in interstate commerce to one of its dealers in Texas and $150 worth of the merchandise was returned by the dealer and accepted as a payment upon the dealer's debt to the plaintiff. This merchandise was then sold to the appellant while the material was still in Texas. The appellant contended that this subsequent sale amounted to an intrastate transaction which was forbidden by statute. The Texas Court of Civil Appeals, 11th Superior Judicial District, Eastland, ruled, however, that the sale of the merchandise to the appellant "did not lose its interstate character" and that plaintiff could sue on an interstate transaction without having a Texas permit to do business. *Harcrow et al. v. The W. T. Rawleigh Co.,** 145 S. W. 2d 925; Commerce Clearing House Court Decisions Requisition No. 247790. Jones & Jones of Mineola, for appellants. Harry R. Bondies of Sweetwater, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Texas, page 529.

When Tax-Hungry States Spot Taxable Corporations

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DETROIT: 719 Griswold St. . . . [LAWA]
CITY: 926 Grand Ave. . . . LOS AN[S. Spri]
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SEATTLE: 821 Second Avenue . . . [: 314]

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Texas.

Leasing of voting machines held not "doing business." An unlicensed foreign corporation, one of the defendants, leased to the other defendant, Dallas County, eighty voting machines for a four-months period. The machines were shipped into Texas from another state. Appellant, as a taxpaying citizen and property owner, for himself and others similarly situated, sought to restrain the performance of the contract by either party, alleging it was void and unenforceable, on the ground that intrastate business was being carried on and by an unlicensed foreign company. The Court of Civil Appeals, Dallas, ruled that the shipment of such machines across state lines, to be leased in Texas, constituted interstate commerce. The court concluded that statements of the company that it would continue to conduct educational schools for five to twenty years for recurring sets of electors and officials to explain the complex mechanism of the voting devices, if the machines were eventually purchased, formed no part of the rental contract, being "more or less gratuitous; and have no particular bearing on its interpretation." These "local features of the transaction were but incidental and appropriate to the lessor's duty of full performance," in the opinion of the court. *Hayden v. Dallas County et al.*,* 143 S. W. 2d 990. Leake, Henry, Young & Golden of Dallas, for appellant. E. G. Moseley, Robert Ogden and Clinton Foshee, Jr., of Dallas, for appellees.

* The full text of this opinion is printed in **The Corporation Tax Service, Texas, page 532.**

Taxation

Arkansas.

Arkansas company leasing structure from Government on Federal reservation ceded by state ruled subject to state income tax. Appellant, an Arkansas corporation, leased from the United States and operated for profit a bath house on the Federal reservation at Hot Springs, Arkansas. The question was whether it was subject to the Arkansas tax of 2% imposed on the net income of domestic corporations "with respect to carrying on or doing business" in the state. The Supreme Court of the United States said: "Whether appellant is subject to the state tax depends on the interpretation of the language of a provision of a Congressional Act of 1891 and the corresponding provision of an Arkansas Act of 1903. The Congressional Act reads: 'The consent of the United States is hereby given for the taxation under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in that State, as personal property of all structures and other property in private ownership on the Hot Springs Reservation.' The 1903 Arkansas act ceded to the United States exclusive jurisdiction over the business area of the reservation, reserving only the right to tax accorded by the 1891 Act and the right to serve criminal and civil process." The appellant

contended that under the Federal act the only taxes Arkansas could levy were ad valorem taxes imposed directly on tangible property. The court observed that this contention "loses sight of the fact that the word property is by no means limited, in all its variations, to actual tangible physical things. Its meaning must be determined from its context as illumined by the subject treated and the objectives sought. It is true that Arkansas had no corporate income tax in 1891, when the original permission to tax was granted. But taxation policies and systems change with necessities and experience, and no support can be found in the Act for a belief that Congress consented to state taxation only if Arkansas would make its 1891 tax system static." The court concluded that the tax could properly be imposed under the circumstances. Justice Stone, in a separate opinion, concurring on other grounds, observed: "It is enough that no Act of Congress and no agreement by the state with the Federal Government prohibits the tax. The fact that income-producing property is physically located on the territory of another sovereignty does not foreclose the state from taxing its own residents and corporations on the income derived from the property. *"Superior Bath House Company v. McCarroll,** 61 S. Ct. 503. Commerce Clearing House Court Decisions Requisition No. 252182. Terrell Marshall of Little Rock, for appellant. Frank Pace, Jr., and Lester M. Ponder, of Little Rock, for appellee. *(Note: By Public Act No. 819, approved October 9, 1940, Congress permits the states to extend their income taxes to those residing in or receiving income from transactions occurring or services performed within a Federal area.)*

* The full text of this opinion is printed in **The Corporation Tax Service, Arkansas, page 1511.**

Iowa.

Qualified foreign corporation, with stores in Iowa, held required to collect Iowa use tax on mail orders of Iowa residents sent to and filled by the company's stores in other states. In *Sears, Roebuck and Co. v. Roddewig et al.,* 292 N. W. 130, (The Corporation Journal, October, 1940, page 232), the Iowa Supreme Court ruled that a foreign corporation, authorized to do business in Iowa and conducting a number of retail stores in that state, which also operated, outside of Iowa, mail order stores to which Iowa customers sent orders by mail, was not required to report and collect the Iowa use tax on shipments made from without the state to Iowa customers when filling such mail orders. Upon appeal, the Supreme Court of the United States has reversed this ruling, concluding that the employment of the foreign corporation as a collection agent for the State of Iowa under the circumstances did not place an unconstitutional burden upon it. Referring to the fact that the corporation was authorized to do business in Iowa, the court felt that "since Iowa has extended to it that privilege, Iowa can exact this burden as a price of enjoying the full benefits flowing from its Iowa business." After having noted that the sales and use taxes were complementary,

the court said: "Nor is the mode of enforcing the tax on the privileges of these Iowa transactions any discrimination against interstate commerce. As we have seen, the use tax and the sales tax are complementary. Sales made wholly within Iowa carry the same burden as these mail order sales. A tax or other burden obviously does not discriminate against interstate commerce where 'equality is its theme.'" *Nelson et al. v. Sears, Roebuck and Co.*,* 61 S. Ct. 586. Commerce Clearing House Court Decisions Requisition No. 253122. John M. Rankin, Attorney General, and John E. Mulroney, Asst. Attorney General, for petitioners. Ralph L. Reed and Joseph G. Gamble of Des Moines and Charles Lederer of Chicago, for respondents. *(Rehearing denied, March 17, 1941.)*

A companion case, also appealed from the Iowa Supreme Court, *Montgomery Ward & Co. v. Roddewig et al.*, 292 N. W. 142, (The Corporation Journal, October, 1940, Page 233), involving an identical question, was also reversed. *Nelson et al. v. Montgomery Ward & Co., Inc.*, 61 S. Ct. 593. *(Rehearing denied, March 17, 1941.)*

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* The full text of this opinion is printed in **The Corporation Tax Service, Iowa**, page 6227.

New York.

Court of Appeals affirms, without opinion, Appellate Division in upholding New York City Sales Tax on shipments to New York City customers from other states. The Court of Appeals of New York has affirmed, without opinion, a ruling of the New York Supreme Court, Appellate Division, First Department, upholding an assessment of the New York City Retail Sales Tax imposed upon an Illinois corporation not licensed to do business in New York. This company maintained an office in New York City, with a staff of sixteen or seventeen solicitors, who solicited orders which were sent to the Chicago office for approval. The goods were then shipped to the customer in New York City from Chicago or Cleveland and freight or other transportation costs charged to the customer. The petitioner company had contended that the enabling act barred the city from applying the tax to such a transaction, since the title and possession passed outside the city. The Appellate Division, however, regarded the approval of the orders outside the state as automatic and incidental and delivery from outside the state as a matter of convenience, as "there is nothing about petitioner's products which could not be duplicated in their entirety either by a printer or tool company in the City of New York," and observed that the testimony indicated that "the purchaser—the real taxpayer—was wholly indifferent where the merchandise came from as long as he got it on time and in good condition." The court regarded the purchase as completed and consummated by final shipment and delivery of the merchandise within the city to a city purchaser for use or consumption. The court concluded that "in the case at bar as to every essential transaction in the record, the ultimate taxpayer is a New York City purchaser who bought the goods from a New York City

salesman and received them for use in New York City, and the tax should be upheld." *United Autographic Register Co. v. McGoldrick,** 260 App. Div. 157, 21 N. Y. S. 2d 129; affirmed without opinion by the New York Court of Appeals, January 23, 1941. Newton K. Fox, for petitioner. Edmund B. Hennefield of counsel (Arthur A. Segall and Sol Charles Levine with him on the brief; William C. Chanler, Corporation Counsel), for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service,** New York, page 22,124.

Virginia.

Peddlers' license tax upheld as applied to sales from trucks by domesticated foreign corporation. Plaintiff, a West Virginia corporation domesticated in Virginia, but with no place of business in the latter state, manufactured bakery products in West Virginia and sold these in Virginia to grocers and other retail dealers by carrying the products by trucks from place to place over regular routes at regular intervals, making sales without having secured previous orders. The corporation was convicted of peddling without having first secured a license from the Commonwealth under Sec. 192b of the Tax Code, imposing a license tax upon those who "peddle goods, wares or merchandise by selling and delivering the same at the same time to licensed dealers or retailers at other than a definite place of business operated by the seller." The Virginia Supreme Court of Appeals, in affirming a judgment of the trial court, upholding the validity of the statute as applied to plaintiff, adopted, in part, the opinion of the lower court which regarded the statute as applying to domestic rather than interstate commerce and, as to plaintiff, as applying only to its deliveries in Virginia as a result of peddling done there. There appeared to the court to be no burden placed upon interstate commerce and no discrimination against non-residents or denial of the equal protection of the law under the circumstances. *Caskey Baking Co. v. Commonwealth of Virginia,** 10 S. E. 2d 535. Commerce Clearing House Court Decisions Requisition No. 243540. Martin, Seibert & Beall, R. Gray Williams and J. Sloan Kuykendall, for plaintiff in error. Attorney General Abram P. Staples, Asst. Attorney General W. W. Martin, for the Commonwealth. *(Note: Appeal filed in the Supreme Court of the United States, January 6, 1941; Docket No. 676.)*

* The full text of this opinion is printed in **The Corporation Tax Service,** Virginia, page 7614.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ARKANSAS. Docket No. 180. *Superior Bath House Company v. McCarroll,* 61 S. Ct. 503. (The Corporation Journal, April, 1941, page 374.) State taxation of income derived from business conducted on Federal reservation. **Appeal filed, June 25, 1940. Probable jurisdiction noted, October 14, 1940. Submitted, December 18, 1940. Affirmed, February 3, 1941.** (See page 374.)

ILLINOIS. Docket No. 763. *Kreicker v. The Naylor Pipe Co., et al.,* 29 N. E. 2d 502. (The Corporation Journal, December, 1940, page 271.) Constitutionality of statute limiting power to amend provisions governing preferred stock rights. **Appeal filed, February 12, 1941. March 3, 1941,** *"Per curiam:* The motion to affirm is granted and the judgment is affirmed. *Violet Trapping Co. v. Grace,* 297 U. S. 119, 120; *Ingraham v. Hanson,* 297 U. S. 378, 381; *Schenebeck v. McCrary,* 298 U. S. 36, 37."

IOWA. Docket No. 255. *Sears, Roebuck & Co. v. Roddewig et al.,* 292 N. W. 130. (The Corporation Journal, October, 1940, page 232.) Iowa use tax—collection of tax on mail orders filled by plaintiff's stores in other states. **Appeal filed, June 18, 1940. Certiorari granted, October 14, 1940. Argued, January 13 and 14, 1941. Reversed and remanded, February 17, 1941.** (See page 375.) **Rehearing denied, March 17, 1941.**

IOWA. Docket No. 256. *Montgomery Ward & Co. v. Roddewig et al.,* 292 N. W. 142. (The Corporation Journal, October, 1940, page 233.) Iowa use tax—collection of tax on purchases by Iowa residents in plaintiff's stores in other states. **Appeal filed, June 18, 1940. Certiorari granted, October 14, 1940. Argued, January 13 and 14, 1941. Reversed, February 17, 1941.** (See page 376.) **Rehearing denied, March 17, 1941.**

NEW YORK. Docket No. 741. *Klaxon Co. v. Stentor Electric Mfg. Co.,* 115 F. 2d 268. (The Corporation Journal, April, 1941, page 366.) **Appeal filed, February 3, 1941. Certiorari granted, limited to the first question presented by the petition, March 3, 1941.** (The "first question" is: *"Whether a provision of the New York Civil Practice Act regarding monetary interest is applicable to an action in the Federal District Court for Delaware?"*)

VIRGINIA. Docket No. 676. *Caskey Baking Company, Inc. v. Commonwealth of Virginia,* 10 S. E. 2d 535. (The Corporation Journal, April, 1941, page 377.) Sale and delivery of products from trucks—validity of license tax on peddler selling to licensed dealers. **Appeal filed, January 6, 1941. Probable jurisdiction noted, February 3, 1941.**

* Data compiled from CCH **U. S. Supreme Court Service,** 1940-1941.

Regulations and Rulings

CALIFORNIA—The State Board of Equalization has amended Ruling No. 20.1 so as to make the sales tax apply "to the gross receipts from retail sales of tangible personal property upon Federal areas to the same extent that it applies to gross receipts from sales made elsewhere within the State." (California Corporation Tax (CT) Service, ¶ 64-023a.)

KENTUCKY—The Attorney General of Kentucky has rendered an opinion to the Commissioner of Revenue to the effect that gasoline purchased by a Kentucky dealer and exported to another state is not subject to the gasoline tax. (Kentucky CT (Corporation Tax) Service, ¶ 40-905.)

MARYLAND—A foreign non-profit corporation, which exercises in Maryland the powers and functions for which it was organized, is doing business in the state and must qualify with the State Tax Commission. (Opinion, Attorney General to State Tax Commission, Maryland CT, ¶ .407.)

MICHIGAN—A revision of Rule 40 by the State Board of Tax Administration provides that exemption for industrial processing is now confined exclusively to sales of tangible personal property which becomes an ingredient or component part of the finished product, or which is consumed, destroyed, or loses its identity in a manufacturing process; and to sales of specific machinery and processing equipment which is exclusively designed, made for, and specifically used in the manufacture of a product to be sold at retail. (Michigan CT, ¶ 64-200.)

MISSOURI—The Attorney General of Missouri has rendered an opinion to the effect that the Interstate Commerce Sales Tax Regulation (Chapter III) is invalid "in so far as it attempts to tax the sale of tangible personal property outside the State of Missouri and delivered in Missouri to the purchaser, even though purchased upon an order given to an agent of the seller in Missouri, but where the order is finally accepted in a foreign state, and also sales of tangible personal property in Missouri to a citizen of another state and where such property is not purchased for consumption in Missouri but for the purpose of being transported to the other state." (Missouri CT, ¶ 64-715.)

NEW YORK—A stock transfer tax is due where the purchaser of stock directs issuance in the name of his nominee who endorses the certificates and deposits them for delivery to the purchaser. (Opinion, Attorney General, New York CT, ¶ 200-404.)

NORTH DAKOTA—Purchases of machinery, equipment and material used in the construction and maintenance of highways by the North Dakota State Highway Department are subject to sales and use taxes in the opinion of the Attorney General. (North Dakota CT, ¶ 7995a.)

VIRGINIA—The Department of Taxation has prepared a list of Virginia corporations and of a number of foreign companies showing the percentage of dividends received in 1940 and taxable in connection with individual income tax returns of residents of Virginia in 1941. (Virginia CT, pages 265-5 to 266.)

Some Important Matters for April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

DISTRICT OF COLUMBIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

DOMINION OF CANADA—Annual Summary due on or before June 1.—Dominion Companies.

Income Tax and Excess Profits Tax Return due on or before April 30.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual Report and License Tax due on or before April 15.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MARYLAND—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations. *(Change from March 15 to April 15 effected by Ch. 36, Laws 1941, effective February 26, 1941.)*

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15 and delinquent after June 1.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before May 15.—Domestic Corporations.

NEW MEXICO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3 IT-Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

PENNSYLVANIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

VERMONT—Income (Franchise) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Gross Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A single explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—completely up-to-date as regards the most recent amendments.

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